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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
)
Automatic and Manual Roaming Obligations)
Pertaining to Commercial Mobile Radio Services)
_____)

WT Docket No. 00-193

COMMENTS OF SPRINT PCS

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January 5, 2001

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Table of Contents

Summary of Comments	ii
I. American Consumers Expect “Anywhere” Coverage with Their Mobile Service — Namely, Ubiquitous, Seamless Roaming	2
II. Although Competition in the CMRS Market Is Robust, the Roaming Market Is Not Fully Competitive	4
III. Market Experience Suggests That the Roaming Market Is Not Fully Competitive	6
IV. The Duopoly Roaming Market Has Become Very Concentrated	7
V. The Commission Should Be Prepared to Intervene If Any Carrier Attempts to Misuse Its Roaming Market Power	9
VI. Conclusion.....	10

Attachments

Map A: Analog Cellular and CDMA PCS Network Coverage

Map B: AT&T, Verizon & Cingular Analog Network Coverage

Map C: Analog Network Coverage of AT&T, Verizon, Cingular, AllTel,
Western Wireless and US Cellular

Summary of Comments

Consumers expect “anywhere” coverage with their mobile service — that is, ubiquitous, seamless automatic roaming. The ability to roam “off net” is one of the attributes that sets mobile service apart from fixed landline services.

Although competition in the retail CMRS market is robustly competitive, the roaming market by the Commission’s own standards is “not fully competitive.” PCS carriers have aggressively built their networks, and three or more PCS networks currently serve 70% of the population. Not surprisingly, however, given that PCS carriers have held their licenses for at most five years, only 14% of the country’s geography is currently covered by three or more PCS networks. Thus, in most areas of the country, the “seamless, ubiquitous wireless systems” that Congress has determined promotes the nation’s economy requires roaming on one of the two analog cellular networks.

The Commission has recognized that cellular carriers operating in a duopoly market possess dominant market power. The exercise of this market power is confirmed by the roaming pricing practices of cellular carriers. Sprint PCS has experienced roaming prices that vary from 200% to 500% in the same market and instances where large urban carriers charge significantly higher roaming prices than smaller rural carriers.

The duopoly roaming market has become even more concentrated recently. Two years ago, the three largest carriers served 40% of all cellular customers; today, these same three carriers serve 82% of all cellular customers. Although Sprint PCS does not oppose consolidation of the various cellular networks, it does oppose any attempt to use inappropriately expanded roaming market power.

The Commission cannot conclude that market forces are working simply because roaming is widely available today. Current roaming arrangements have developed under the mandates of the Communications Act, including the right to service upon reasonable request and the prohibition against unreasonable discrimination. Although Sprint PCS does not recommend adoption of a new automatic roaming rule in addition to already existing statutory requirements, the Commission must be prepared to intervene if any carrier attempts to misuse its roaming market power.

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Comments of Sprint PCS

Sprint Spectrum L.P., d/b/a Sprint PCS ("Sprint PCS"), submits these comments in response to the Commission's inquiry whether it should adopt automatic roaming rules applicable to commercial mobile radio service ("CMRS") providers.¹

The roaming market is "not fully competitive" by the Commission's own standards, and control over this largely duopolist market has become very concentrated, with most roaming services provided by only three carriers. Although Sprint PCS does not recommend adoption of any new roaming requirements in addition to those that exist today, it is imperative that the Commission be prepared to intervene expeditiously if a carrier attempts to misuse its position in the roaming market.²

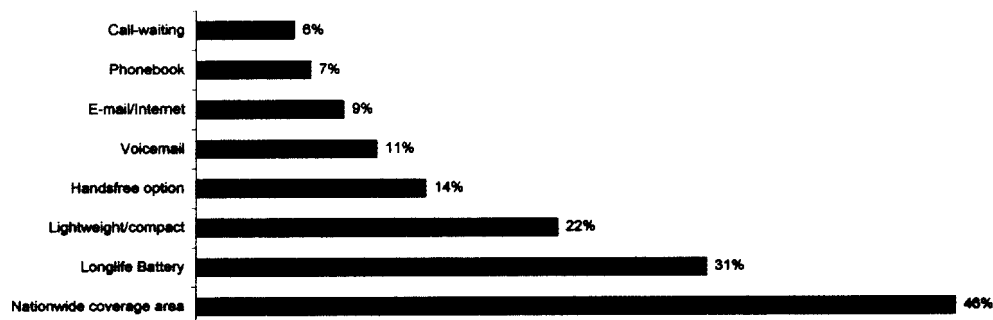
¹ See *Automatic and Manual Roaming Obligations to Commercial Mobile Radio Services*, WT Docket No. 00-193, *Notice of Proposed Rulemaking*, FCC 00-361 (Nov. 1, 2000), 65 Fed. Reg. 69891 (Nov. 21, 2000) ("Roaming NPRM").

² When Sprint PCS refers herein to roaming it means automatic roaming. Sprint PCS has found manual roaming to be a rarely used, non-consumer friendly service (constituting less than 1% of all roaming on its network). Sprint PCS hopes that manual roaming becomes unnecessary because of the widespread availability of automatic roaming.

I. American Consumers Expect “Anywhere” Coverage with Their Mobile Service — Namely, Ubiquitous, Seamless Roaming

“A wireless telephone,” Congress has noted, “is worthless unless the call goes through.”³ In today’s robustly competitive CMRS marketplace, mobile customers expect that their handsets will work while moving within their home areas as well as while traveling outside their home areas -- regardless of location. This ability to “roam,” the Commission has recognized, is “one of the attributes that prominently sets mobile telephone apart from landline service.”⁴

Available customer data suggests that the ability to roam is of importance to consumers. According to a recent Strategis Group study, “nearly three quarters of wireless phone users consider roaming to be very or somewhat important.”⁵ Moreover, a February 2000 study by Peter Hart Research Associates determined that other than price, nationwide coverage is more important to consumers than any other feature:⁶



³ See H.R. Rep. No. 25, 106th Cong., 1st Sess., at 5 (Feb. 23, 1999).

⁴ *Second CMRS Interconnection NPRM*, 10 FCC Rcd 10666, 10693 ¶ 54 (1995).

⁵ Strategis Group, Inc., *U.S. Cellular Marketplace*, § 9.8.5 at 277 (Feb. 2000). Roaming was deemed important by both personal and business users — 73% and 74%, respectively. See *id.* at 278, Table 9.6.

⁶ See Peter D. Hart Research Associates, *The Wireless Marketplace in 2000*, at 11-12 (Feb. 2000), available at www.wow-com.com/statsurv/survey/hart.

The Commission recognized such customer preferences over four years ago, noting that consumers “highly value” roaming and that roaming “is important to the development of nationwide, ubiquitous, and competitive wireless voice telecommunications.”⁷ In 1996, at the time the Commission made this observation, consumers made 1.4 billion roaming calls.⁸ Since then, the number of roaming calls has nearly quadrupled -- with 3.9 million roaming calls made in 1999 and 2.6 billion roaming calls made during the first half of 2000 alone -- even though the number of instances where customers roam has decreased dramatically (between cellular company consolidation and rapid PCS network buildout).⁹

If there was ever any question about the importance of roaming, Congress removed it in passing the Wireless Communications and Public Safety Act of 1999. As the legislative history of this measure notes, “the construction and operation of seamless, ubiquitous, reliable wireless systems serve the public interest by enhancing public safety, improving the usefulness of communications services, and facilitating interstate commerce.”¹⁰ Notwithstanding extraordinarily rapid buildout schedules by new entrants like Sprint PCS, mobile service that is “seamless” and “ubiquitous” throughout the United States can occur only if automatic roaming is widely available.

⁷ *Second CMRS Interconnection Order*, 11 FCC Rcd 9462, 9464 ¶ 2, 9469 ¶ 11 (1996). The importance that the Commission has attached to roaming is reflected by the fact that it has required CMRS carriers to implement number portability in a manner that maintains seamless roaming. See *Local Number Portability*, 11 FCC Rcd 8352, 8440 ¶ 166 (1996); 47 C.F.R. § 52.11.

⁸ See CTIA, *Semi-Annual Wireless Industry Survey*, § 6.2, Table 73 (June 2000).

⁹ See *id.*

¹⁰ H.R. Rep. No. 25, 106th Cong., 1st Sess., at 9 (Feb. 23, 1999). Although the focus of the Wireless Communications and Public Safety Act of 1999 was on 911 emergency services, Congress addressed other matters (e.g., liability protection, CPNI), and it expressly found that “a seamless, ubiquitous, and reliable end-to-end infrastructure for . . . wireless communications” is necessary to meet “the Nation’s public safety and other communications needs.” Section 2(b), Pub. L. 106-81, 106th Cong., 1st Sess., 113 Stat. 1287 (Oct. 26, 1999).

The competitive issue today for the national carriers is not whether ubiquitous coverage (roaming) is available. Instead, the issue has become which carrier provides the best price for its national coverage -- both "on-net" and "off-net" (roaming) calls.¹¹

II. Although Competition in the CMRS Market is Robust, the Roaming Market Is Not Fully Competitive

The retail CMRS market is robustly competitive. According to the Commission's most recent data, over two-thirds of all Americans have a choice of five or more CMRS providers.¹² The state of roaming market, however, is very different -- at least in most areas of the country.

New entrant PCS licensees have the same incentive to enter into roaming arrangements that cellular carriers did when they launched their analog networks: CDMA carriers enter into roaming arrangements with each other, TDMA carriers enter into roaming arrangements with each other, *etc.* One problem with this "PCS roaming" is that today's technology does not permit roaming between networks using different digital air interfaces, although roaming among different types of PCS networks would be of little value at present because most PCS networks are constructed in the same areas.¹³

A more formidable problem is that the coverage contours of all digital PCS networks are still limited. According to the Commission's own data, while three or more PCS networks currently cover 70% of the population, that coverage encompasses just 14% of

¹¹ See *Fifth Annual CMRS Report to Congress*, FCC 00-289 at 9-12, 16-17, 18-20 (Aug. 18, 2000) ("*Fifth CMRS Report*"). Obviously, a carrier with a smaller network that must accordingly rely more heavily on roaming is at a significant cost disadvantage relative to its competitors.

¹² See *Fifth CMRS Report* at 6.

¹³ Thus, a CDMA customer cannot roam on TDMA networks, just as a TDMA customer cannot roam on GSM networks or a GSM customer on a CDMA network.

United States territory.¹⁴ The attachment labeled “Map A” depicts current CDMA PCS network coverage compared to current analog cellular network coverage.¹⁵ This map illustrates that as a practical matter most PCS customer roaming must be done on analog cellular networks, as these are the only networks providing mobile service throughout most areas of the United States. Thus, in most of the country, the roaming market consists of the two incumbent cellular carriers (or successors to the original license holders). Given the importance consumers place on ubiquitous coverage and the significant “head-start” in coverage that the cellular carriers possess, it is not surprising that most of the handsets that Sprint PCS sells are “dual-band” — capable of working on 1.9 GHz CDMA systems and 800 MHz AMPS systems.

The Commission has held that a market of only two providers — like the duopoly cellular market that existed prior to the advent of PCS — is “less than fully competitive,”¹⁶ and that cellular carriers operating in a duopoly market are “dominant.”¹⁷ The Department of Justice, following an extensive investigation, concluded that “cellular duopolists have substantial market power,”¹⁸ and it buttressed its conclusion with “extensive quotations

¹⁴ See *Fifth CMRS Report*, Appendix B, Table 2A.

¹⁵ Coverage maps of TDMA and GSM networks would be very similar.

¹⁶ *First CMRS Report*, 10 FCC Rcd 8844, 8845 ¶ 4 (1995). See also *Second CMRS Report*, 9 FCC Rcd 1411, 1467 ¶ 138 (1994) (“[T]he record does not support a conclusion that cellular services are fully competitive.”); *Cellular Communications Systems*, 86 F.C.C.2d 469, 474 (1981), *modified on recon.*, 89 F.C.C.2d 58, 71-74 (1982). Compare *1998 Biennial Regulatory Review*, 15 FCC Rcd 9219 ¶ 83 (1999) (“[T]he end of the cellular duopoly has led to substantial consumer benefits through reductions in the price of service and in new and enhanced services.”).

¹⁷ See *Second CMRS Report*, 9 FCC Rcd at 1470 ¶ 145. See also *id.* at ¶ 146 (“Standard principles of economics indicate that duopolists may be able to sustain what is in effect a shared monopoly — with attendant elevated prices — either by tacitly agreeing not to price aggressively or by restricting the amount or rate of investment in new capacity.”).

¹⁸ Memorandum of the United States in Response to the Bell Companies’ Motions for Generic Wireless Waivers, *United States v. Western Electric Co.*, 82-0192, at 14-15 (July 25, 1994). The

from documents in the Bell companies' files that showed consciousness of their own power in the marketplace."¹⁹ As the Commission stated when it reaffirmed the need to maintain a resale rule for cellular carriers:

Given the imperfectly competitive, duopoly cellular market that exists today, we do not believe that market forces alone provide sufficient incentive for carriers to allow their facilities-based competitors to resell service where economically efficient.²⁰

Thus, the Commission has explicitly recognized that cellular carriers operating in a duopoly market have both the incentive and the ability to misuse their market power.

Despite the introduction of vigorous competition into the wireless marketplace, in most of the country the roaming market consists of only the two incumbent cellular carriers. As was once the case with the cellular market, this duopoly market structure enables each carrier to exercise substantial market power in the roaming market.

III. Market Experience Suggests that the Roaming Market Is Not Fully Competitive

Sprint PCS' experience negotiating automatic roaming arrangements confirms that some cellular carriers are exercising their duopoly power in the roaming market. In fact, it has been Sprint PCS' experience that cellular roaming prices in the same market can vary from 200% to 500%. In addition, it is not uncommon for regional and smaller rural cellu-

General Accounting Office reached the same conclusion following its separate investigation. See GAO, *Telecommunications: Concerns About Competition in the Cellular Telephone Service Industry*, GAO/RCED-92-220 (July 1992).

¹⁹ *First CMRS Report*, 10 FCC Rcd at 8867 ¶ 65.

²⁰ *First CMRS Interconnection Order*, 11 FCC Rcd 18455, 18470 ¶ 27 (1996). Of course, Sprint PCS acknowledges that the Commission recently determined that the resale rule should be phased out due to vigorous competition in the CMRS marketplace. Sprint PCS agrees that government regulation of resale is now unnecessary because five-to seven facilities-based competitors are

lar carriers to charge lower roaming prices than what some larger carriers charge in urban areas, where service costs are generally lower.²¹ These types of pricing disparities constitute powerful evidence that some cellular carriers do not perceive the roaming market as competitive and price their roaming service accordingly.

In light of this experience, it is imperative that the Commission not conclude that market forces are working properly simply because roaming is widely available today. Current roaming arrangements have developed under the mandates of the Communications Act, including Sections 201 and 202. Yet, as the Commission's "rocket docket" enforcement staff is aware, Sprint PCS and other PCS carriers have been compelled to initiate complaints because certain large cellular carriers either have refused to enter into non-discriminatory roaming arrangements or have threatened to cancel existing arrangements.

IV. The Duopoly Roaming Market Has Become Very Concentrated

The cellular market has experienced unprecedented consolidation in recent years. At the end of 1998, 20 of the 25 largest CMRS providers were cellular carriers.²² Today only nine of those 20 carriers remain, the other 11 were acquired.²³ More remarkably, two years ago, the three largest carriers served 40% of all cellular customers; today, these same three carriers serve 82% of all cellular customers.²⁴ According to Morgan Stanley, the

available to at least 70% of the population. In contrast, in most areas of the country, the roaming market consists of only two incumbent cellular carriers.

²¹ According to Merrill Lynch, smaller carriers charge on average 44 cents for their roaming services, a price it projects will decrease to 36 cents. See Merrill Lynch, *United States Telecom Services – Wireless/Cellular: The Next Generation IV*, at 41, Tables 14 and 15 (March 10, 2000),

²² See *Fifth CMRS Report*, Appendix B, Table 3 at B-5.

²³ See *id.*

²⁴ See *id.* at 27.

“main reason for the purchase of independent cellular companies by larger telecommunications firms (such as AT&T, SBC Communications, GTE, and Bell Atlantic) is the perceived importance of offering a national footprint,” with ownership of a large footprint network far more cost effective than roaming agreements.²⁵ “[T]he larger a carrier’s network, the less roaming and long distance it has to subsidize.”²⁶

This consolidation also has extended the market power of the three largest cellular carriers in the roaming market. When there were numerous cellular carriers, the impact of any one cellular carrier’s roaming decisions was limited, because each carrier’s coverage area was relatively small or confined to a particular region. With the consolidations of recent years, however, the roaming decisions made by major cellular carriers can have a far-reaching national impact -- as is vividly demonstrated by the attached maps. “Map B” shows the areas of the country where the three largest cellular carriers control one or both cellular systems. The attachment labeled “Map C” shows the areas of the country where the six largest cellular carriers control one or both cellular systems. Clearly, the larger cellular carriers dominate the national roaming market. Specifically, in Map B, the (red) areas -- where two of the three largest cellular carriers overlap -- represent approximately 64% of the U.S. population. In Map C, the (red) areas -- where two of the six largest cellular carriers overlap -- represent approximately 81% of the U.S. population. In a marketplace that values a national footprint, this domination represents very significant market power. Therefore, a decision by even one of these large players to withdraw from a roam-

²⁵ Morgan Stanley Dean Witter, *US Wireless Services: The Urge to Merge — 2000*, at 8 (May 22, 2000).

²⁶ *Id.*

ing arrangement with a new entrant would alter fundamentally the roaming opportunities available to consumers.

The Commission has noted, correctly, that recent cellular industry consolidation “will intensify competition among nationwide wireless providers” to the benefit of consumers.²⁷ Sprint PCS welcomes this added competition.²⁸ But this consolidation also provides the major cellular carriers with an incentive to misuse their substantial power in the roaming market. As noted above, market experience demonstrates unequivocally that these carriers have the ability to act on this market power -- given the vast areas of the country where they control the roaming market without the benefit of competition from new entrants.

V. The Commission Should Be Prepared to Intervene if Any Carrier Attempts to Misuse Its Roaming Market Power

Although the Commission does not have a specific rule mandating automatic roaming, carriers have been providing this service pursuant to the core directives of the Communications Act.²⁹ Specifically, under Section 201(a), CMRS carriers must provide roaming services “upon reasonable request” and under Section 201(b), all roaming “charges, practices . . . shall be just and reasonable.” Further, under Section 202(a), carriers are prohibited from making “any unjust or unreasonable discrimination” in their roam-

²⁷ *Fifth CMRS Report* at 75.

²⁸ Sprint PCS does *not* oppose the consolidation of the cellular industry. Sprint PCS will oppose, however, any attempts to use roaming market power inappropriately as a result of such combinations.

²⁹ See *Roaming Order*, 11 FCC Rcd 9462, 9468 ¶ 10 (1996)(FCC rejects cellular carrier argument that roaming is not subject to Sections 201 and 202 of the Communications Act).

ing charges or practices. The Commission has declared its willingness to entertain complaints that roaming carriers are violating these basic requirements.³⁰

Relying on the Act's substantive requirements and the Commission's complaint procedures has proven relatively successful. Although the task has been arduous, Sprint PCS has been able to negotiate roaming agreements with most cellular carriers, and it believes that other PCS providers have achieved similar results. When one cellular carrier threatened to misuse its market power against Sprint PCS, the Commission intervened to convince the carrier that exercising such power improperly was neither consistent with the Communications Act nor spirited competition in the marketplace.

Sprint PCS is reluctant to propose changes to an approach that has proven relatively successful. Although the "less than competitive" roaming market has become more concentrated recently, Sprint PCS does not recommend imposition of additional automatic roaming requirements at this time. Such a requirement may become necessary, however, if incumbent cellular operators attempt to misuse their power in the roaming market. Until there is evidence of such abuse, Sprint PCS supports utilizing existing statutory requirements.³¹

VI. Conclusion

Six years ago, the Commission noted "the importance of roaming in a competitive CMRS marketplace" and encouraged "all CMRS providers [to] respond by implementing

³⁰ See, e.g., *Second CMRS Interconnection NPRM*, 10 FCC Rcd 10666, 10693 ¶ 56, 10694 ¶ 58 (1995).

³¹ As it noted in 1996, "Sprint PCS would support Commission regulation of roaming when, but only when, there is evidence that CMRS providers are denying competitor's requests for roaming agreements." See Sprint PCS Comments, Docket No. 94-54, at 4 (Oct. 4, 1996).

nationwide seamless roaming networks.”³² Recognizing the importance of this service, the Commission further declared that it would take “any steps necessary to support roaming”:

[W]e stand ready to intercede should the parties be unable to reach reasonable private agreements and will closely scrutinize any exercise of market power or engagement in other forms of anti-competitive conduct designed to raise rivals’ costs and thwart competition, or to charge unjust or unreasonable prices for roaming service.³³

Although the number of American consumers roaming on mobile networks continues to grow, the roaming market has become more concentrated. Accordingly, the Commission’s willingness to monitor the misuse of market power has become even more critical.

Respectfully submitted,

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³² *Second CMRS Interconnection NPRM*, 10 FCC Rcd 10666, 10693 ¶ 56, 10694 ¶ 58 (1995).

³³ *Id.* at 10693 ¶ 54 and 16094 ¶ 58.

CERTIFICATE OF SERVICE

I, Anthony Traini, hereby certify on that on this 5th day of January 2001, I served a copy of the foregoing Sprint PCS Comments by hand delivery to the following persons:

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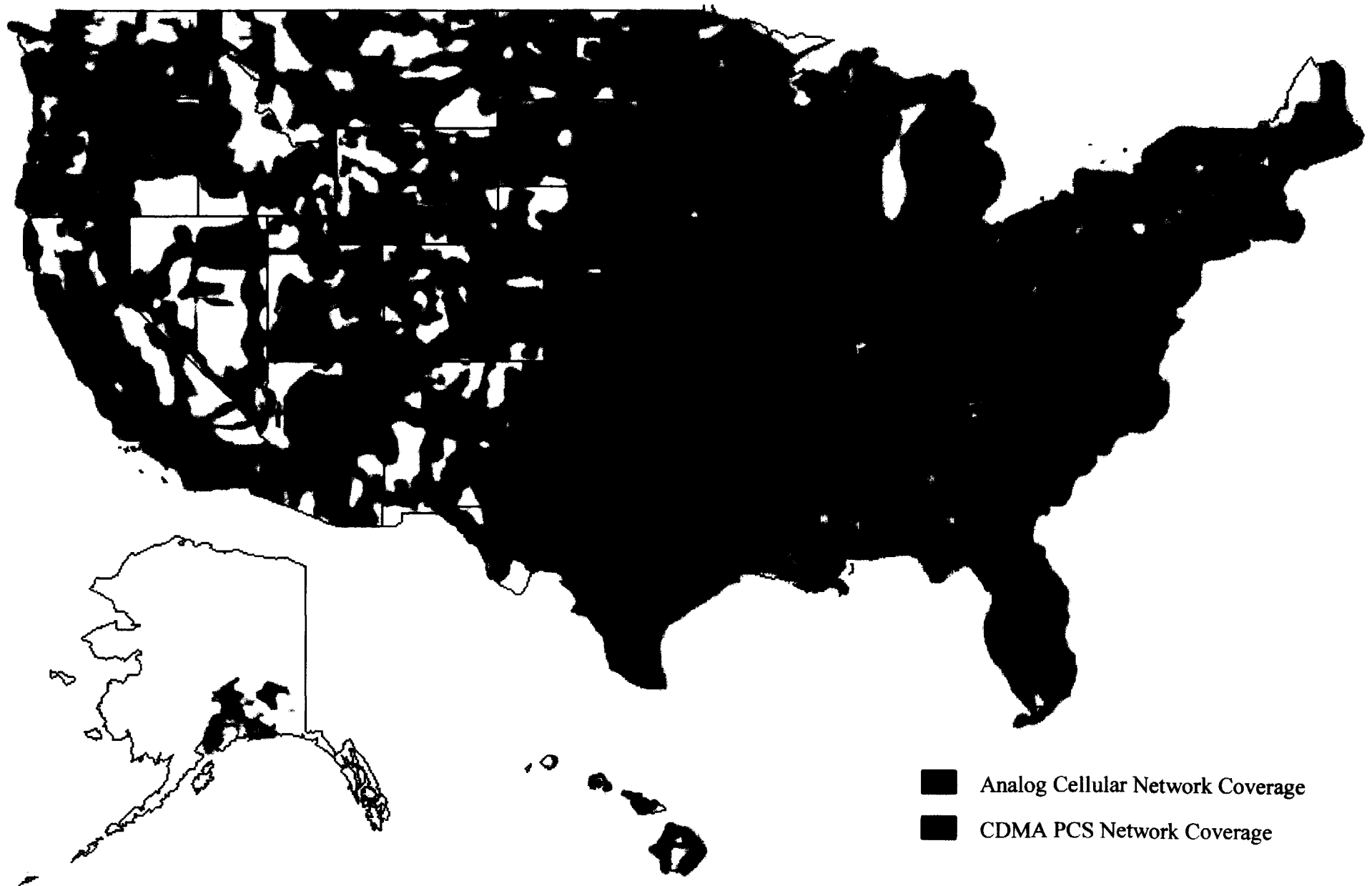
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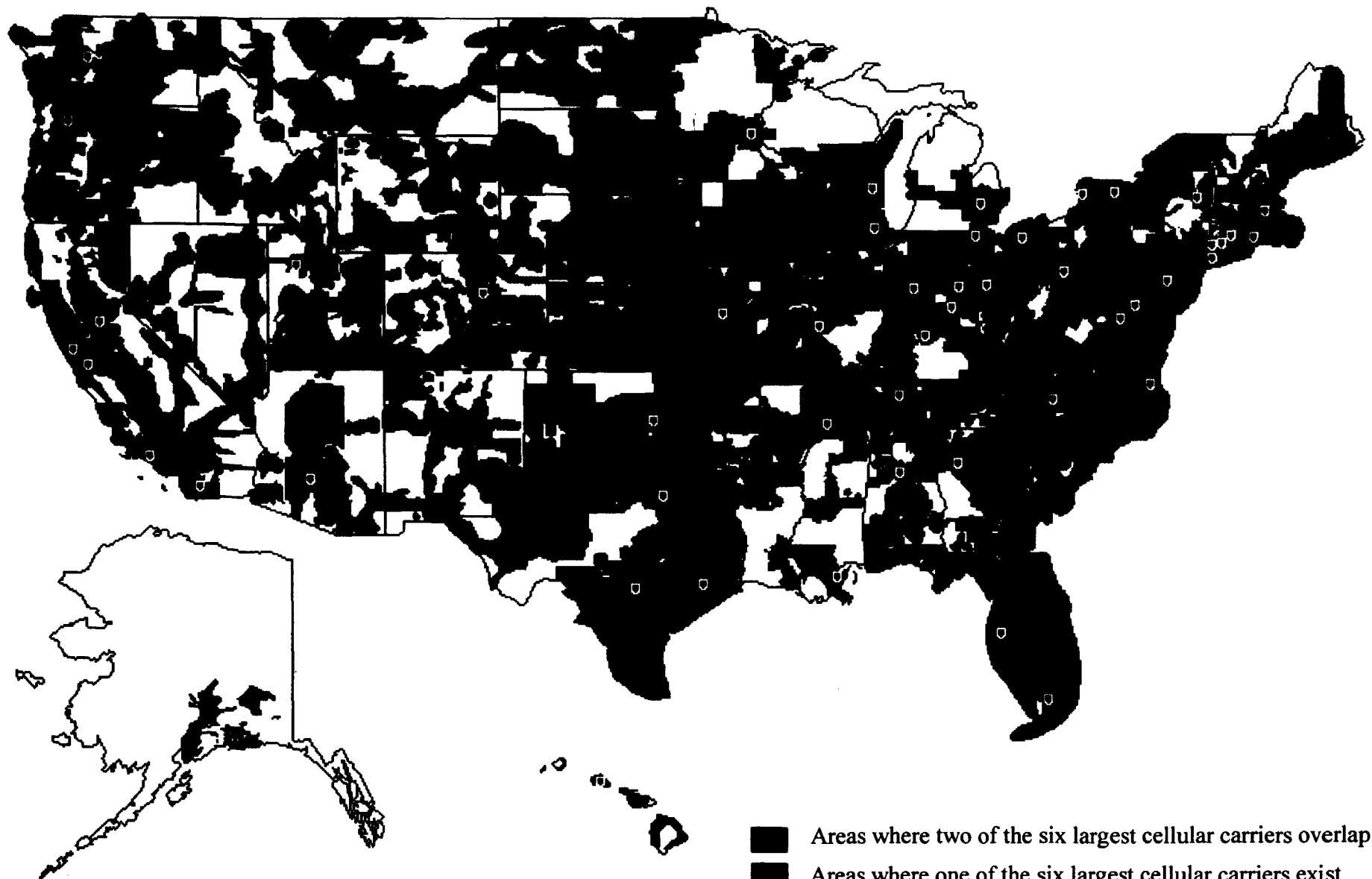
Map A

Analog Cellular and CDMA PCS Network Coverage



Map B

Analog Network Coverage of AT&T, Verizon, Cingular, AllTel, Western Wireless & US Cellular



Map C

AT&T, Verizon & Cingular Analog Network Coverage

